

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1136251
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Gerardo GARCIA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1899

Gerardo GARCIA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 2 March 1972, an Administrative Law Judge of the United States Coast Guard at New York, N.Y., revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board SS EXPORT AIDE under authority of the document above captioned, on 15 October 1971, Appellant wrongfully had in his possession a narcotic, to wit: hashish.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a record of conviction in the Criminal Court, Kings County, City of New York for possession of drugs.

In defense, Appellant made an unsworn statement.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 8 March 1972. Appeal was timely filed on 19 March 1972 and perfected on 14 August 1972.

FINDINGS OF FACT

On 15 October 1971, Appellant was serving as a wiper on board SS EXPORT AIDE and acting under authority of his document while the ship was at Brooklyn, N. Y.

Because of the disposition to be made of this case, no further findings are made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Administrative Law Judge improperly construed 46 CFR 137.03-4 in its application to the instant case.

APPEARANCE: Klein and Sterling, New York, by Max Cohen, Esq.

OPINION

After the Investigating Officer had advised Appellant at the time of service of charges that among the possible results of the hearing were revocation, suspension, and suspension on probation of his document, the Administrative Law Judge "corrected" this at hearing to declare that there were only two possible results of the hearing, dismissal or revocation. This was done on the theory that hashish is a narcotic other than marijuana, and therefore the discretion granted to administrative law judges by the 1970 amendment to 46 CFR 137.03-4 was not available in this case.

21 U.S.C. 802, item (15), defines "marijuana" for these proceedings. It includes resins extracted from any part of the plant, Cannabis Sativa. Hashish is just such a resin, and is marijuana within the meaning of 46 CFR 137.03-4.

Appellant is entitled to a hearing in which he may seek to persuade the Administrative Law Judge that his possession of hashish (assumed for the purpose of this decision) was indicative of such use, possession, or association as to authorize a finding that it "was the result of experimentation by the person and that the person has submitted satisfactory evidence that such use will not recur," with a possible result of an order less than revocation.

ORDER

The order of the Administrative Law Judge dated at New York, N.Y., on 2 March 1971, is VACATED. The findings are SET ASIDE and case is REMANDED for further proceedings not inconsistent with this decision.

T. R. Sargent
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 5th day of December 1972.

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